



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Heather Philpott
Serial number: 09/728,748
Filed: 12/02/2000
Title: Veronica Plant Named Glory
Attorney docket number: PH17

Group Number: 1661
Examiner: Annette Para

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AFFIDAVIT OF MICHAEL L. DUNNETT

I Michael L. Dunnett, hereby declare as follows:

I was the Managing Director of Blakedown Nurseries from June of 1974 until Blakedown Nurseries entered administration and discontinued operations in October of 1999. Blakedown Nurseries is located in the United Kingdom. Blakedown Nurseries was a wholesale nursery that only sold to other retail nurseries and garden centers. Blakedown Nurseries did not sell plants to the general public.

I was approached in the spring of 1997 by Heather Philpott, a gardener, who had discovered Veronica 'Glory'. It appeared that the variety might have commercial potential.

Blakedown Nurseries entered into a contract with Heather & Mike Philpott in January of 1998. This contract appointed Blakedown Nurseries as the exclusive producer and distributor of Veronica 'Glory', subject to successful propagation testing and growing trials by Blakedown Nurseries. No other parties were allowed to reproduce or sell Veronica 'Glory'.

In order to perform the propagation testing and growing trials and to start to build up quantities of Veronica 'Glory' sufficient for commercial sales, Blakedown Nurseries purchased

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approximately 100 plants of Veronica 'Glory' from Heather Philpott in May of 1998. These 100 plants were never sold or distributed to the public and remained in the possession of Blakedown Nurseries at all times. They were used for mother stock from which cuttings for propagation were taken.

There were problems that occurred during the propagation testing. The propagation of Veronica 'Glory' by vegetative cuttings encountered poor yields. It was unclear as to whether the poor yields had been caused by a failure to use the most appropriate rooting compound, by disease or if the cuttings had not been taken at the best time of the year.

In April of 1999, a market test of Veronica 'Glory' was performed. The plants were test marketed under the trade name 'Royal Candles'. One of the purposes of the test marketing was to establish the suitability of the name 'Royal Candles' 38 plants of Veronica 'Glory' were provided to Cheals Garden Center in West Sussex, United Kingdom. These 38 plants were placed on sale for approximately a 2 week period. Approximately 20 of these plants were sold. The 18 unsold plants were returned to Blakedown Nurseries. The market test was not publicized and no advertising took place.

The summer of 1999 was used to perform additional propagation testing and to build up a further stock of plants in view of the losses that had occurred during previous propagation attempts.

Blakedown Nurseries entered administration in October of 1999 and all plants at the nursery were impounded by the administrators until an agreement was brokered with Notcutts Nurseries in December 1999 for the purchase of the plant inventory of the nursery.

The sale of plants of Veronica 'Glory' to the general public commenced in the spring of 2000, from Notcutts Nurseries in the United Kingdom under the trade name of 'Royal Candles'.

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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further; that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of any patent to which this verified statement is directed.

In Witness Whereof, we have hereunto set our hands and affixed our seals the

26th day of June 2006.

Michael Dunnett

On this 26th day of June, 2006, before me personally appeared Michael Dunnett, to me known to be the person described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

M. G. Huskinson

Notary Public

M. G. HUSKINSON
NOTARY PUBLIC
WORCESTER
U.K.

